IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

Writ Petition No 57 of l993

Aarkay Green Valley Hills
Pvt Ltd and ors.... petitioners
vs
State of Mah and ors.. respondents

Mr. P.D.Gandhy for petitioners

Ms Geeta Shastry AGP for respondent .nos.l and 2

Mr A.G.Kothari for respondent nos. 3 to 5

CORAM: A.P.SHAH & S.J.VAZIFDAR JJ.
Dated 9.2.2005

P.C:

l. By this petition under Article 226 the petitioners are seeking a declaration that the requisition order of l955 and the allotment order dated l2.5.l955 passed under the Bombay Land Requisition Act, l948 requisitioning petitioners' premises being two halls each on the 2nd and 3rd floors of the Shreejee Chambers, Bestion Road and Dr.D.N.Road, Bombay have come to an end and/or ceased to be in force. The petitioners are also seeking to quash and set aside the said order of requisition and the allotment order and to hand over quiet, vacant and peaceful possession of the said premises to the petitioners. The petitioners had also raised a challenge to the constitutional validity of the Maharashtra Ordinance No.XV dated

24.l2.l992 but this challenge was not pressed before us.

2. It appears that the premises in question were requisitioned by respondent nos.l and 2 as far back as in l955 in order to enable the respondent nos. 3 and 4 to house their college. It is an admitted position that respondent nos. 3 and 4 have been already allotted by the Municipal Corporation, Greater Bombay Plot No. 9, Sewree-Wadala Estate Scheme No.57, Bombay admeasuring 259844 sq ft and at that place respondent nos. 3 and 4 are already running a Commerce and Law college. More over it is brought on record that during the pendency of the writ petition on or about l0.l.2000 Shreejee Chambers caught fire and was destroyed. After the fire the building was in such a dangerous condition that the Municipal Corporation issued a notice dated l9.l.2000 to the petitioners under section 354 of the Bombay Municipal Corporation, Act requiring the petitioners to pull down the said building as it was in a ruinous condition likely to fall and dangerous to any person occupying, resorting to or passing by the same. It appears that the said notice issued by the Municipal Corporation was challenged by the occupants of the

building including respondent nos. 3 and 4 in L.C.Suit No.63l of 2000 filed before the City Civil Court at Bombay and the plaintiff in that suit took out a Notice of Motion No 35l of 2000 praying for injunction restraining the petitioners from demolishing the said building in pursuance to the notice dated l9.l.2000. By order dated 4.2.2000 the Bombay City Civil Court declined to grant interim relief and consequently the petitioners had demolished the building as per the notice dated l9.l.2000.

3. The learned counsel appearing for the petitioners submitted and in our opinion not without sufficient force that section 4(5) of the Bombay Land Requisition Act, l948 defines "to requisition" means to take possession of the land or to require the land to be placed at the disposal of the State Government . Section 8E of the said Act makes it clear that the allotment of the requisitioned land or premises shall be deemed to be license in favour of the allottee for his use and occupation. The learned counsel urged that the said premises being destroyed in fire and the said portion of the building in which the said premises were situated having been demolished the rights of

the State Government or its allottees have come to an end.

4. The learned counsel for the petitioners brought to our notice decision of the Apex Court in H.D.Vora vs The State of Maharashtra, AIR l984 SC 866. The Apex Court has held that the requisition by its very nature must be temporary in character as opposed to acquisition, which is permanent in character. That under the guise of requisitioning premises,the Government cannot seek to acquire the said premises by holding on to the same for an indefinite period of time. That the action of the Government if it seeks to do so would amount to a fraud on statute and a fraud on the powers conferred on the Government by statute. That requisition by its very nature is for a temporary period and for a temporary purpose. In the present case the requisition was made sometime in l955 and this requisition cannot be allowed to be continued for an indefinite period. Further having regard to the facts that the premises in question are destroyed in fire the order of requisition ceased to be in force.

5. Mr.Kothari, learned counsel appearing for the

respondent nos. 3 to 5- original respondent nos. 3 and 4 submitted that the respondents have been direct and contractual tenants of the requisitioned premises from the pre-requisitioned period and in any event the predecessors in title of the petitioners have accepted the rent from the respondent nos. 3 and 4, thereby recognising respondent nos. 3 and 4 as their direct tenants. In the first place there is no evidence to show the tenancy of the respondent nos. 3 and 4 prior to the requisition order. It is true that in para l4 of the affidavit the respondent nos. 3 and 4 have relied upon certain rent receipts to show that the rent was directly paid to the landlord and instead of State Government. This would not, however, confer any tenancy right on the respondent nos. 3 and 4, the allottees under the requisition order. In H.D.Vora's case (supra) the Apex Court has held that where an allottee under an order of requisition gave the amount directly to landlord instead of State Government and the landlord also accepted it, the order of requisition could not cease to be valid and effective on that count. In such a case, it did not matter whether the allottee described the amount as rent, because whatever was done by him was under order of requisition and so

long as as order of requisition stood,his possession of property was attributable only to order of requisition and no payment of an amount described as rent could possibly alter the nature of his occupation of the property or make him the tenant of the landlord in respect of the property. In this view of the matter it is not possible to accept the rent receipts as evidence of direct tenancy as pleaded by respondent nos. 3 to 5. In any event this court cannot adjudicate upon the alleged tenancy rights of the respondent nos 3 and 4 in a writ petition under Article 226. It would be open to respondent nos.3 and 4 to establish their rights by adopting appropriate remedy in accordance with law.

5. In the light of the law laid down by the Supreme Court in H.D.Vora’s case (supra) the action of the respondents in seeking to continue to hold to the requisitioned premises indefinitely is wholly illegal, void and without jurisdiction. In the result the petition succeeds. Rule is made absolute in terms of prayer clause (a-l) and (b). It is an admitted position that after demolition of the building, petitioners are in possession of the plot and therefore prayer for handing over

possession of the said building does not survive.

Petition is accordingly disposed of.